

~~Supreme Court, U.S.~~  
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**In the  
Supreme Court of the United States**

**MICHAEL A. SODERSTRAND,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

**On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Tenth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**January 30, 2006**

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## QUESTIONS PRESENTED FOR REVIEW

### I.

Is a State employee of a public, state-funded university a “state actor” for purposes of analysis of search and seizure issues under the Fourth Amendment?

### II.

Must the “good faith” doctrine espoused in *United States v. Leon*, 468 U.S. 897 (1984) be circumscribed in cases such as this one where the affidavit in support of the search warrant describes *on its face* material that is protected speech under the First Amendment?

### III.

Is a limited remand to the District Court (the sentencing court) required under *United States v. Booker*, 543 U.S. 220 (2005) to gauge prejudice under the plain error doctrine?

**LIST OF PARTIES TO PROCEEDING**

The following were all parties to the appeal in the United States Court of Appeals for the Tenth Circuit:

1. Dr. Michael A. Soderstrand.
2. United States of America.

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Michael A. Soderstrand petitions respectfully for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at *United States v. Soderstrand*, 412 F.3d 1146 (10<sup>th</sup> Cir. 2005), and is reproduced in the Appendix at page 3a. The Order denying rehearing is reproduced in the Appendix at page 1a. The District Court Order denying Soderstrand's Motion to Suppress is reproduced in the Appendix at page 19a.

### JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered June 16, 2005. Dr. Soderstrand's motion for panel rehearing and suggestion for rehearing *en banc* was denied September 1, 2005.<sup>1</sup> On November 18, 2005, the Honorable Stephen Breyer, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit, granted Dr. Soderstrand's request for an extension of time within which to file a petition for a Writ of Certiorari extending to and

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<sup>1</sup> Dr. Soderstrand sought clarification of the Tenth Circuit's initial Order denying rehearing because the Order did not address the motion for *panel* rehearing and addressed the motion for rehearing by the Circuit *en banc* only. The Circuit issued the Order filed September 26, 2005, as reproduced in the Appendix at page 1a, clarifying that both motions were denied.

including January 29, 2006.<sup>2</sup> The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

### CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. AMEND. IV, provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. V, provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property

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<sup>2</sup> January 29, 2006, falls on a Sunday; thus, pursuant to Rule 30.1, *Rules of the Supreme Court of the United States*, this Petition must be filed on or before Monday, January 30, 2006.

be taken for public use, without just compensation.

U.S. CONST. AMEND. VI, provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. AMEND. XIV, § 1, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### STATEMENT OF THE CASE

Dr. Michael Soderstrand, formerly an engineering professor at Oklahoma State University in Stillwater,

Oklahoma, entered a conditional guilty plea to one count of possession of child pornography in the United States District Court for the Western District of Oklahoma. Dr. Soderstrand's case presents issues of search and seizure law, as well as sentencing issues, that should be addressed by this Court.

## I. PROCEDURAL BACKGROUND.

Dr. Soderstrand was indicted on March 19, 2003, in the United States District Court for the Western District of Oklahoma. The indictment alleged thirteen (13) counts of knowingly possessing computer disks and other material containing images of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). The evidence against Dr. Soderstrand was acquired by the Government during a search of Dr. Soderstrand's safe at his office at Oklahoma State University in Stillwater, Oklahoma, on July 10, 2002, pursuant to a search warrant issued and served by State officials.

On June 30, 2003, Dr. Soderstrand filed a Motion to Suppress, seeking an order from the District Court holding the seizure of items from his safe unconstitutional and therefore inadmissible. On July 23, 2003, the Honorable Tim Leonard, United States District Judge, issued a written order denying Dr. Soderstrand's Motion to Suppress. *See* Appendix at 19a.

As a result of the denial of the Motion to Suppress, Dr. Soderstrand reached a plea agreement with the Government whereby he agreed to enter a *conditional* plea to one Count in the Indictment in exchange for the Government dismissing the other twelve counts. The combined plea and sentencing hearing was held on January 7, 2004. At the conclusion of the